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(*Bishop v. The American Preservers Company*, 157 Ill., 284, 41 N. E. 765, 48 Am. St. Rep. 317), and the plaintiff brings this action against the surety for failure to return the property there in question, the facts of that case being as follows: Bishop was the owner of a manufactory of fruit butters, etc. He was induced by threats and promises to transfer this business in exchange for trust certificates to the American Preservers Company, who thereupon turned the property over to his management and paid him a salary. He continued as their agent for about three years, when he attempted to avoid the contract and hold the property as his own. Suit was brought in replevin in the Illinois courts by the American Preservers Company, judgment given for the plaintiff in the lower court, and reversed on appeal, and the case was sent back for a new trial on the ground that the transfer was illegal as against public policy. For failure to prosecute the new trial, judgment by default was rendered in the Illinois courts for the defendant, and the suit in the United States courts commenced against the surety for failure of the American Preservers Company to return the property. The statute of Illinois provides that when the merits of the case have not been determined, title to the property may be pleaded in mitigation of damages in a suit on a replevin bond. 3 Starr and C. Ann. St. Ill. c. 119 par. 26, pg. 3388. *Held*, that the surety is not liable because the property belongs to the American Preservers Company, the defendant being estopped as an agent, to set up the illegality of the contract of sale in a collateral suit against him. *Gilbert v. American Surety Co.* (1902), C. C. A. 121 Fed. Rep. 499.

The agent is estopped to deny his principal's title to property with which he has been intrusted. *Claflin v. The Continental Jersey Works*, 85 Ga. 27, 11 S. E. 721. It has been held likewise that the parties to an executed illegal contract will be held bound as the courts find them. *Ager v. Duncan*, 50 Cal. 325; *Williams v. Englebrecht*, 37 Oh. St. 383.

AGENCY—DISTINGUISHED FROM TRUST.—A, having received certain money on an insurance policy, turned it over to B. Witnesses testified, some that after paying the debts of the deceased, B was to hold the remainder for A's children, others that the remainder was to be returned to A, who brings suit for the amount left in B's hands on the theory that B is her agent. The defense contends that he is a trustee for the children. *Held*, that A should recover. *Flaherty v O'Connor* (1903), — R. I. — 54 Atl. Rep. 376.

The court refused to hold B a trustee because the evidence to prove the trust was not clear and convincing. *Columbia Nat'l. Bank v. Baldwin*, 90 N. W. 890. There are several differences between an agency and a trust, important among which are (1), that a trust is irrevocable. PERRY ON TRUSTS, Vol. 1, Sec. 104; *Kraft v. Neuffer*, 52 Atl. 100, 202 Penn. 558; without the consent of the beneficiaries or a reservation of power to revoke, *Van Cott v. Prentice*, 104 N. Y. 45, while an agency exists at the will of the principal unless it is coupled with an interest, MICHAM ON AGENCY, Secs. 240 and 241; (2), that legal title is in the trustee, but where an agency exists it remains in the principal, *Sibley v Ober & Sons Co.*, 87 Ga. 55, 13 S. E. 711; (3), an agent is ordinarily employed to negotiate or contract with third parties, not so a trustee, *Hartley v. Phillips*, 198 Penn. 9; (4), the trustee represents the beneficiary, the agent his principal, *Whittle v. Vanderbilt, etc. Co.*, 83 Fed. 48; (5), a trust is not revoked by the death of either party, while an agency is usually terminated thereby, *Lyle v Burke*, 40 Mich. 499.

AGENCY OR SERVICE—TELEGRAPH COMPANIES—KNOWLEDGE OF OPERATOR.—That a telegraph company is chargeable with the knowledge of an operator, on the same theory as a principal is responsible for the knowledge

of an agent, *Held*, incorrect, as an operator is a servant and not an agent, and the rule of agency has no application. *Western Union Tel. Co. v. Wolford* (1903), — Tex. —, 74 S. W. Rep. 943.

The distinction between servant and agent cannot be clearly defined, but exists. Agency relates to transactions of business with third persons; service has reference to action upon or about things. *MECHEM*, AG. § 2. This division line, while generally of small importance, may become practical in certain instances. *McCroskey v. Hamilton* (1899), 108 Ga. 640, 34 S. E. 111; *Tete v. Lanaux* (1893), 45 La. Ann. 1343, 14 So. R. 241; *Wildner v. Ferguson* (1889), 42 Minn. 112, 6 L. R. A. 338.

CARRIER—REFUSAL OF PASSENGER TO PAY EXTRA FARE—ASSAULT BY CONDUCTOR ON PASSENGER WHILE ENFORCING THE COMPANY'S RULES.—By statute, the company was required to keep its ticket office open for the sale of tickets for at least one hour before the departure of each passenger train, and a passenger entering the cars without a ticket could lawfully be charged five cents in addition to the ticket rate of fare. Because of the absence of the ticket agent, from five to ten minutes before the departure of the train, the plaintiff entered the cars without a ticket, and upon demand tendered the conductor the regular ticket rate, explaining the circumstances. The conductor again demanded the train fare, and upon a further refusal to pay, ejected the plaintiff, after a struggle, using no more force than was necessary. In an action for assault and battery against the company: *Held*, there was no excuse for forcible resistance, and there could be no recovery. *Monnier v. N. Y. C. & H. R. R.* (1903) — N. Y. — 67 N. E. Rep. 569.

A passenger without a ticket must pay his fare or quietly leave the train, resorting to his appropriate remedy for the damages sustained, and upon resistance can recover no damages resulting therefrom, the conductor, in ejecting him, using no more force than is necessary. See *Penn. R. R. Co. v. Connell*, 112 Ill. 295, 54 Am. Rep. 238; *Bradshaw v. So. Boston R. R. Co.*, 135 Mass. 407, 46 Am. Rep. 481; *Peabody v. O. R. & N. Co.*, 21 Or. 121, 12 L. R. A. 823. The decision in the principal case was given by a divided court (four and three), and the dissenting opinion is well supported, many courts holding "that it is not the duty of a passenger to pay fare wrongfully demanded, but that he may stand upon his rights." See *Zagelmeyer v. C. S. & M. R. R.*, 102 Mich. 214, 47 Am. St. Rep. 514; *Jeffersonville R. Co. v. Rogers*, 38 Ind. 116, 10 Am. Rep. 103; *Erie R. R. v. Winter*, 143 U. S. 60.

CONSTITUTIONAL LAW—FREE SPEECH—DISTRIBUTION OF CIRCULARS.—An ordinance, under authority of statute, declaring unlawful the distribution of "dodgers, handbills, or circulars," in the city of Omaha, was enforced. *Held*, proper, as a valid exercise of the police power, and no infringement upon the constitutional right of free speech. *Anderson v. State* (1903), — Neb. —, 96 N. W. Rep. 149.

The general right to life, liberty, or property, is not absolute. It is limited and restricted by the necessary exercise of the police power of the state. *State v. Schlemmer* (1890), 42 La. Ann. 1116, 10 L. R. A. 135. As was stated in the principal case, "a police regulation * * * is not invalid simply because it may affect incidentally the exercise of some right guaranteed by the constitution." The more particular right to free speech has many boundaries. It does not extend immunity to libel or slander, does not allow dissemination of immoral or obscene matter, does not permit malicious interference, nor does it sanction profanity, or prevent the state from dictating the conduct of